



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, 424, and 476

[CMS-1588-CN5]

RIN 0938-AR12

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates; Hospitals' Resident Caps for Graduate Medical Education Payment Purposes; Quality Reporting Requirements for Specific Providers and for Ambulatory Surgical Centers; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors that appeared in the final rule that appeared in the August 31, 2012 **Federal Register** entitled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates; Hospitals' Resident Caps for Graduate Medical Education Payment Purposes; Quality Reporting Requirements for Specific Providers and for Ambulatory Surgical Centers."

DATES: This correcting document is effective on [OFR: Insert date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2012-19079, which appeared in the August 31, 2012 **Federal Register** (77 FR 53258) entitled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates; Hospitals' Resident Caps for Graduate Medical Education Payment Purposes; Quality Reporting Requirements for Specific Providers and for Ambulatory Surgical Centers" there were technical errors that are identified and corrected in the Correction of Errors section of this correcting document.

II. Summary of Errors in the Preamble

On page 53602 and 53603, we inadvertently included Medicare Advantage (MA) claims in our calculation of the final performance standards that apply to the PSI-90 measure for the FY 2015 and FY 2016 Hospital Value-Based Purchasing Program.

We also note that we have made similar corrections to the FY 2014 IPPS/LTCH PPS final rule and these corrections are published elsewhere in this issue of the **Federal Register**.

III. Waiver of Proposed Rulemaking and Delay of Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding

and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

In our view, this correcting document does not constitute a rule that would be subject to the APA notice and comment or delayed effective date requirements. This correcting document corrects technical errors in certain HVBP tables but does not make substantive changes to the HVBP policies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the HVBP tables accurately reflect the policies adopted in that final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate corrected table values in as timely a manner as possible, and to ensure that the FY 2013 IPPS/LTCH PPS final rule accurately reflects our HVBP policies. Furthermore, such procedures would be unnecessary, as we are not altering our HVBP policies, but rather, we are simply implementing correctly the policy for calculating certain HVBP table values that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure

that the FY 2013 IPPS/LTCH PPS final rule accurately reflects these HVBP policies.

Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2012-19079 of August 31, 2012 (77 FR 53258), make the following corrections:

1. On pages 53601 and 53602, in the table entitled "FINAL PERFORMANCE STANDARDS FOR THE FY 2015 HOSPITAL VBP PROGRAM CLINICAL PROCESS OF CARE, OUTCOME, AND EFFICIENCY DOMAINS," the performance standards for the PSI-90 Measure are corrected to read as follows:

| Measure ID | Description | Achievement Threshold | Benchmark |
|-------------------------|--|-----------------------|-----------|
| Outcome Measures | | | |
| PSI-90 | Patient safety for selected indicators (composite) | 0.616248 | 0.449988 |

2. On page 53603, in the table entitled "FINAL PERFORMANCE STANDARDS FOR FY 2016 HOSPITAL VBP PROGRAMS OUTCOME DOMAIN: MORTALITY/PSI COMPOSITE MEASURES," the performance standards for the PSI-90 Measure are corrected to read as follows:

| Measure ID | Description | Achievement Threshold | Benchmark |
|-------------------------|--|-----------------------|-----------|
| Outcome Measures | | | |
| PSI-90 | Patient safety for selected indicators (composite) | 0.616248 | 0.449988 |

CMS-1588-CN5

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare--Hospital Insurance; and Program No. 93.774, Medicare--Supplementary Medical Insurance Program)

Dated: March 6, 2014.

Jennifer M. Cannistra,

Executive Secretary to the Department,

Department of Health and Human Services.

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8:45 am; Publication Date: 03/18/2014]